

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

DONALD K. ALEXANDER,

Plaintiff,

vs.

Case No.: 4:18-cv-00498-HFS

COCHLEAR LIMITED and COCHLEAR
AMERICAS,

Defendants.

**DEFENDANT COCHLEAR AMERICAS' MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

COMES NOW Defendant Cochlear Americas ("Cochlear"), and moves for dismissal of Plaintiff's Complaint, (Dkt. No. 1), with prejudice. As described more fully in Cochlear's Suggestions in Support filed with this Motion, Plaintiff's claims are preempted by federal law because he has challenged the safety and efficacy of a medical device subject to premarket approval by FDA, and thus should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). In addition, Plaintiff has failed to allege claims under the Missouri Merchandising Practices Act, or for breach of the implied warranty of fitness for a particular purpose under the applicable pleading standards set forth in Federal Rules of Civil Procedure 8 and 9(b). Finally, because amendment of his Complaint cannot result in any viable claims, amendment is futile and the Complaint should be dismissed with prejudice.

WHEREFORE, Defendant Cochlear Americas requests the Court dismiss Plaintiff's Complaint with prejudice, and for any further relief the Court deems just.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

/s/ Devin Ross

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2018, a true and correct copy of the foregoing was served upon the following via U.S. Mail, postage prepaid:

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Pro Se Plaintiff

/s/ Devin Ross

Devin Ross